

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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United States of America,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR. No. 05-011 S
	)	
Anthony Lipscomb,	)	
	)	
Defendant.	)	
_____	)	

**DECISION AND ORDER**

WILLIAM E. SMITH, United States District Judge.

I. Introduction

Defendant Anthony Lipscomb ("Defendant") has filed this Motion to Suppress evidence which the United States of America (the "Government") seeks to admit against him. For the reasons set forth below, this Court denies Defendant's Motion because he has failed to carry his "burden of proving a legitimate expectation of privacy" on his part as to the evidence he seeks to have suppressed. United States v. Lewis, 40 F.3d 1325, 1333 n.1 (1st Cir. 1994). A hearing was held before this Court on this matter on April 13, 2005.

II. Background

At the hearing on Defendant's Motion to Suppress, three individuals testified: Providence, Rhode Island, Police Officer Scott Partridge; Providence, Rhode Island, Detective Joseph Colanduono; and the Defendant. In light of the vastly divergent rendition of events presented by the two police officers as

compared to the Defendant, this Court will set out the facts as presented by each witness.

A. The Facts as Testified to by Officer Partridge

In December 2004, Officer Partridge received information from a confidential informant (who had provided reliable information leading to arrests in the past) stating that Defendant "deals in crack cocaine and is known to carry a weapon." (Tr. at 7.) This informant further reported that Defendant conducted his crack distribution business in "the west end of the city." (Tr. at 8.) Finally, the informant provided the following additional information: the type of car that would be driven by Defendant -- a beige Jaguar;<sup>1</sup> Defendant's cell phone number; the name of Defendant's girlfriend;<sup>2</sup> and the address where Defendant's girlfriend resided and where Defendant (according to the informant) stayed from time to time.

Officer Partridge recognized Defendant's name and checked Defendant's criminal history. He found Defendant had "[n]umerous

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<sup>1</sup> Officer Partridge testified four different times at the hearing that the Jaguar in question was "beige" or "a beige silverish color." (Tr. at 6, 7, 9, 10.) Upon being shown his arrest report, however, Officer Partridge corrected his testimony to state the Jaguar was "green." (Tr. at 10.)

<sup>2</sup> The Defendant testified that, while the woman in question could be called his "girlfriend" because she was a friend who was a female, he denied the relationship being any more substantial than that. The Court will refer to the woman as Defendant's girlfriend for the sake of simplicity and consistency with the questioning at the hearing.

narcotics violations." (Tr. at 8.) Officer Partridge also conducted surveillance of Defendant's girlfriend's residence "approximately half a dozen" times. (Id.) He reported seeing Defendant at the address on several occasions and that Defendant was often accompanied by his girlfriend. He further reported that Defendant was driving a Jaguar with license plate "XM 82," which was the registration provided by the confidential informant.<sup>3</sup> (Tr. at 9.)

In the early morning hours of December 30, 2004, Officer Partridge received a tip from a second confidential informant (who also had provided reliable information leading to arrests in the past)<sup>4</sup> that Defendant "would be in possession of a large amount of crack cocaine and a weapon as he was going to be making a delivery to the west end of the City of Providence." (Tr. at 11.) The second informant further stated that Defendant would be leaving from his girlfriend's residence and driving to Carpenter Street with his girlfriend.

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<sup>3</sup> While Officer Partridge testified on cross-examination that he observed the license plate on the Jaguar on the day of the arrest as being "XM 82" (Tr. at 25), the Government has agreed to enter a stipulation to the fact that the Jaguar as currently impounded bears the license plate "SOVRN."

<sup>4</sup> Officer Partridge acknowledged on cross-examination that there was no mention of having received any prior reliable tips from this informant in Officer Partridge's post-arrest report. (Tr. at 23.)

In response to this information, Officer Partridge and some other officers established a surveillance of Defendant's girlfriend's residence. Shortly thereafter, Defendant arrived in the Jaguar and picked up his girlfriend. The officers followed the Jaguar to an auto repair shop on Carpenter Street, which is considered to be in the west end of Providence. Defendant parked the Jaguar, exited wearing a dark-colored jacket,<sup>5</sup> and started talking on his cell phone as he walked toward the repair shop. It was at this time that Officer Partridge, along with Detective Colanduono, pulled up next to the Defendant, exited their vehicle and approached Defendant. As soon as the officers identified themselves as police officers, the Defendant began to run, ignoring the officers' commands to stop.

As the Defendant ran away from the officers, toward the front overhead doors of the repair business, Officer Partridge saw Defendant reach into his right pocket with his right hand and discard "a large bag of suspected crack cocaine." (Tr. at 16.) Officer Partridge stopped and picked up the bag.

Rejoining the chase of Defendant, Officer Partridge observed the Defendant reach into his waistband and discard a firearm with his left hand by throwing it beneath some parked vehicles. Officer Partridge then saw the Defendant and Detective Colanduono engage in

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<sup>5</sup> Officer Partridge could not recall whether the jacket was ever seized.

a brief struggle. The Defendant broke free and left Detective Colanduono holding Defendant's jacket.<sup>6</sup> After breaking free of Detective Colanduono, the Defendant began to run back toward the street and Officer Partridge tackled him. A struggle then ensued in which the Defendant and Officer Partridge were joined by several other officers. Once the Defendant was placed into handcuffs, a pat down disclosed "two clear plastic bags of suspected marijuana."<sup>7</sup> (Tr. at 21.) Officer Partridge later learned that Detective Colanduono had retrieved the firearm from under the car where the Defendant had thrown it. Officer Partridge also learned that later, after the Defendant was transported to Roger Williams Hospital, a Detective by the name of Zeitountzian seized \$1,471 from the Defendant.<sup>8</sup>

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<sup>6</sup> Detective Colanduono testified that he went through Defendant's jacket following the arrest, but that the jacket was not seized because it contained no relevant evidence. He did not know what happened to the jacket.

<sup>7</sup> The indictment does not charge Defendant with possession of marijuana. Accordingly, the scope of Defendant's Motion to Suppress is limited to the firearm and bag of suspected crack cocaine.

<sup>8</sup> Defendant testified he had the cash as a result of work he performed in connection with two of his businesses -- a landscaping and a handyman business. Defendant also testified he ran a music business and sold vehicles. Defendant further testified he had not filed any tax returns in connection with at least one of the businesses on advice of counsel.

B. The Facts as Testified to by Detective Colanduono

For the most part, the testimony of Detective Joseph Colanduono corroborated that of Officer Partridge. In addition, Detective Colanduono testified that no fingerprints were found on the retrieved firearm, and that he did not believe any fingerprint analysis was done of the seized drugs. He also testified that he observed the license plate on the Jaguar the day of the arrest to be "XM 82." Detective Colanduono explained his prior grand jury testimony, which quoted him as saying "if it was him" in connection with a question about the Defendant possessing the firearm, as having been the result of "a misunderstanding between the stenographer and myself." (Tr. at 35.)

C. The Facts as Testified to by Defendant Lipscomb

On December 30, 2004, the date of his arrest, Defendant was living at an address in the west end of Providence. He had made plans to watch his niece take part in the Ice Capades starting at 1:00 p.m. at the Civic Center, and was on his way there when the arrest occurred. He had picked up his girlfriend around noon, and stopped by the auto repair shop on Carpenter Street to set up a follow-up appointment for his work truck.<sup>9</sup> He was also planning to

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<sup>9</sup> On cross-examination, Defendant testified that while he had done business with this auto repair shop on numerous occasions, he did not know the name of the business. Defendant testified this was because the shop had only recently put up a sign with its name. When asked whether he knew the names of any of the employees at the auto repair shop, Defendant testified that "I believe there's a guy named Hector that works there." (Tr. at 51.) Defendant further

make a deposit at the bank "because it was the 30th of the month and the first was coming so I want[ed] to make a deposit and take care of all my bills and rent." (Tr. at 44.)

Defendant was driving a green Jaguar with vanity plates that read "SOVRN." He had changed from the prior registration of "XM 82" the previous summer. When he arrived at the auto repair shop on Carpenter Street, he got out of his car and, while talking on his cell phone, walked into the fenced lot containing various parked automobiles and spoke with an employee about setting a date to repair his work vehicle. After five to ten minutes he began to walk back to the Jaguar while making another call on his cell phone to make sure he was still on time for the Ice Capades. It was at this time that a car pulled up and Detective Colanduono jumped out and tackled the Defendant. Defendant was surprised and struggled because he didn't know at the time that Detective Colanduono was a police officer. A couple of other men arrived and started beating Defendant. The men told Defendant that he was under arrest, put handcuffs on him, and then "rammed my face more than ten times on the cement." (Tr. at 48.) Defendant testified Officer Partridge "called me a nigger, and he said 'I know you have some drugs somewhere because niggers, they don't have cars like this without selling narcotics.'" (Tr. at 63.)

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testified that he always paid in cash. Defendant was not able to produce any paperwork documenting any of his alleged interactions with the auto repair shop.

Defendant denied having ever stayed overnight at his girlfriend's. He also denied having worn a jacket or possessing either a firearm or any crack cocaine or other illegal drugs. Defendant further denied ever having possessed a firearm at any time. Defendant also testified he had previously been arrested and convicted four separate times for possession of a controlled substance.

### III. Analysis

"Before embarking upon the merits of a suppression challenge, a criminal defendant must show that he had a reasonable expectation of privacy in . . . relation to the items seized." United States v. Aguirre, 839 F.2d 854, 856 (1st Cir. 1988). In making the determination of whether a defendant has made this showing, a court looks "to whether or not the individual thought of . . . the article . . . as a private one, and treated it as such." Id. at 857.

Here, Defendant testified he never possessed either the firearm or the suspected crack cocaine the Government seeks to offer as evidence against him. Thus, based upon the Defendant's own version of the facts, he had no interest whatsoever in the articles, much less the necessary privacy interest. Accordingly, the Defendant has not crossed the "standing" threshold, "and until the 'standing' threshold is crossed, the bona fides of the search



and seizure are not put legitimately into issue." Id. at 856.<sup>10</sup> Given the Defendant's lack of standing to pursue the instant Motion, it must be denied.

The Court could end its analysis here. However, given the unusual nature of Defendant's testimony, the Court will address the issue of what the result would be based upon the officers' rendition of the facts.<sup>11</sup> The result would be the same. On the officers' rendition of the facts, the Defendant abandoned the firearm and bag of suspected crack cocaine before a seizure occurred. "When a defendant abandons property before a 'seizure' occurs, the Fourth Amendment is not implicated because the property is not the fruit of an illegal search and seizure." Lewis, 40 F.3d at 1334; see also United States v. Williams, No. 03-30415, 2003 WL 22478173, at \*5 (5th Cir. Nov. 3, 2003) ("It is well-established law that a defendant who has voluntarily abandoned property lacks

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<sup>10</sup> The term "standing" is used "somewhat imprecisely" in this context. Lewis, 40 F.3d at 1333 n.1. It refers here to the establishment of "a legitimate expectation of privacy as a prerequisite to challenging assertedly unlawful police conduct." Id.

<sup>11</sup> To the extent the Court would be required to make findings of fact to reach a conclusion on this alternative basis, the Court would find that the officers' recitation of the facts are far more credible than the Defendant's far-fetched tale. Such an assessment of Defendant's credibility does not render this Court unfit to preside over the trial of this matter. See United States v. Amick, 439 F.2d 351, 369 (7th Cir. 1971) ("Rulings and findings made by a judge in the course of a judicial proceeding are not in themselves sufficient reasons to believe that the judge has a personal bias or prejudice for or against a party.").

standing to challenge the seizure of that property."). Defendant here was not seized for purposes of this analysis before he abandoned the firearm or suspected bag of crack cocaine. See California v. Hodari D., 499 U.S. 621, 625 (1991) ("If, for example, Pertoso had laid his hands upon Hodari to arrest him, but Hodari had broken away and had then cast away the cocaine, it would hardly be realistic to say that that disclosure had been made during the course of an arrest.") (emphasis in original); United States v. Sealey, 30 F.3d 7, 10 (1st Cir. 1994) ("Even if we assume that Officer Reynolds' question to Sealey constituted a show of authority, Sealey did not submit to this inquiry. Instead, Sealey resisted Officer Reynolds, he ran away, and ignored any authority that the officer manifested. . . . Because the contraband discarded by Sealey while he was running was not the fruit of this seizure, the act of abandonment extinguished his Fourth Amendment claim."); United States v. Hernandez, 27 F.3d 1403, 1407 (9th Cir. 1994) ("A seizure does not occur if an officer applies physical force in an attempt to detain a suspect but such force is ineffective. We hold that Hernandez was not seized because he never submitted to authority, nor was he physically subdued. Consequently, any evidence obtained . . . is admissible . . . .") (internal citation omitted).

Nor is this a case where Defendant's abandonment of the firearm and suspected crack cocaine was "involuntary" because it

stemmed from improper police conduct. See Williams, No. 03-30415, 2003 WL 22478173, at \*5 ("[T]o preclude standing, the abandonment must have been 'voluntary and not influenced by improper police conduct.'" ) (quoting United States v. Alvarez, 6 F.3d 287, 289 (5th Cir. 1993)); see also Massachusetts v. Painten, 368 F.2d 142, 144 (1st Cir. 1966) ("The defendant's action in throwing the package was not voluntary but was forced by the actions of the police,' and since their actions were improper, the police were not entitled to the fruits.") (quoting Hobson v. United States, 226 F.2d 890, 894 (8th Cir. 1955)). At the very least, the officers here had reasonable suspicion to approach the Defendant. See Williams, No. 03-30415, 2003 WL 22478173, at \*5 (concluding officer had reasonable suspicion to pursue fleeing defendant and therefore defendant's abandonment of firearm was "not influenced by improper police conduct"). While the testimony of the officers was not free from potential obstacles to finding reasonable suspicion,<sup>12</sup> the totality of the circumstances here leaves no doubt that the officers were justified in concluding that "criminal activity may be afoot," Terry v. Ohio, 392 U.S. 1, 30 (1968). The officers had information from two reliable informants, which they corroborated

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<sup>12</sup> The potential obstacles included: (1) failure to properly identify Defendant's license plate; (2) failure to note the second informant's reliability history on the police report; (3) confusion regarding the color of the Jaguar; (4) failure to retain Defendant's seized jacket; (5) grand jury testimony indicating Detective Colanduono was uncertain as to Defendant's possession of the firearm; and (6) lack of fingerprint evidence.

via their own observations, that Defendant would be traveling to the west end of Providence, from a particular address, at a particular time, in a particular vehicle, to conduct a drug transaction, and that he would be armed. Compare Alabama v. White, 496 U.S. 325 (1990) (finding reasonable suspicion to stop vehicle based on corroborated anonymous tip of a pending drug transaction, which identified the person, place, time, vehicle and destination but improperly predicted person would be carrying drugs inside a brown attache case).

#### IV. Conclusion

For the foregoing reasons, Defendant's Motion to Suppress is DENIED because the Defendant lacks the requisite standing because he either never possessed the relevant items or abandoned them.

IT IS SO ORDERED.

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William E. Smith  
United States District Judge  
Dated: